

DELTA PROTECTION COMMISSION

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May 30, 2008

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Dear Ms. Brown,

SUBJECT: Notice of Preparation of Joint ERI/EIS for the Bay Delta Conservation Plan (BDCP)

The staff of the Delta Protection Commission (Commission) has reviewed the Notice of Preparation document dated March 17, 2008 in relation to the Commission's Land use and Resource Management Plan for the Primary Zone of the Delta (Management Plan). The following information and comments are provided for your consideration in the environmental review process for the subject project.

The Delta Protection Act (Act) was enacted in 1992 in recognition of the increasing threats to the resources of the Primary Zone of the Delta from urban and suburban encroachment having the potential to impact agriculture, wildlife habitat, and recreation uses. Pursuant to the Act, a Management Plan was completed and adopted by the Commission in 1995.

The Management Plan sets out findings, policies, and recommendations resulting from background studies in the areas of environment, utilities and infrastructure, land use, agriculture, water, recreation and access, levees, and marine patrol/boater education/safety programs.

The goals, findings, policies, and recommendations from the Management Plan that are relevant to this project include, but are not limited to, the following:

Environment

- **Finding 1:** The physical environment which existed prior to 1850 has been permanently and irretrievably modified through levee construction, drainage of wetlands, and introduction of agriculture.
- **Finding 5:** While over 95% of all wetlands in the Delta have been lost, the Delta area is used by 10% of the wintering waterfowl traveling within the Pacific Flyway.
- **Finding 7:** The value to wildlife of levee habitat and habitat within the levees is lessened by on-going human impacts such as levee maintenance, farm practices, human habitation, and recreational use of the levees and waterways. Activities such as water transport and boating use have eroded Delta channel islands, berms, and levees destroying habitat areas. Without levee maintenance, the habitat on the levees and within the islands will be lost.

- Finding 8: The native population of fish and other aquatic species has been modified by hydromodification including water diversion, etc., through introduction of exotic species and other causes. Numbers of both native and of some introduced fish have dropped dramatically since the late 1960's; numbers have dropped so low that winter-run Chinook salmon and Delta smelt have been listed as endangered and threatened, respectively. However, the population of some introduced species of fish and other introduced aquatic species throughout the aquatic food chain has substantially increased.
- Finding 9: There is no Delta regionwide management plan for wildlife resources.
- Finding 13: Delta channel islands and levees serve as habitat for several burrowing species, including beaver and muskrat. Some species have created burrows large enough to endanger levee stability.
- Policy 3: Lands managed primarily for wildlife habitat shall be managed to provide several inter-related habitats. Deltawide habitat needs should be addressed in development of any wildlife habitat plan. Appropriate programs, such as "Coordinated Resource Management and Planning" [Public Resources Code Section 9408(c)] and "Natural Community Conservation Planning" (Fish and Game Code Section 2800 et seq.) should ensure full participation by local government and property owner representatives.
- Recommendation 1: Seasonal flooding should be carried out in a manner so as to minimize mosquito production. Deltawide guidelines outlining "best management practices" should be prepared and distributed to land managers.
- Recommendation 2: Wildlife habitat on the islands should be of adequate size and configuration to provide significant wildlife habitat for birds, small mammals, and other Delta wildlife.
- Recommendation 3: Undeveloped channel islands provide unique opportunities for permanent wildlife habitat in the Primary Zone. A strategy should be developed to encourage permanent protection and management of the channel islands. Protection may include: acquisition, conservation easements, or memoranda of understanding. Management may include: protection from erosion, controlling human access, or habitat management, such as planting native plants and removing exotic plants. Some larger, reclaimed channel islands may be suitable for mixed uses, such as recreation and habitat. Any development on channel islands must ensure long-term protection of the wildlife habitat.
- Recommendation 4: Feasible steps to protect and enhance aquatic habitat should be implemented as may be determined by resource agencies consistent with balancing other beneficial uses of Delta resources.
- Recommendation 5: Publicly-owned land should incorporate, to the maximum extent feasible, suitable and appropriate wildlife protection, restoration and enhancement as part of a Deltawide plan for habitat management.

- Recommendation 6: Management of suitable agricultural lands to maximize habitat values for migratory birds and other wildlife should be encouraged. Appropriate incentives, such as conservation easements, should be provided by nonprofits or other entities to protect this seasonal habitat through donation or through purchase.
- Recommendation 7: Lands currently managed for wildlife habitat, such as private duck clubs or publicly-owned wildlife areas, should be preserved and protected, particularly from destruction from inundation.
- Policy 3: Lands managed primarily for wildlife habitat shall be managed to provide several inter-related habitats. Delta-wide habitat needs should be addressed in development of any wildlife habitat plan. Appropriate programs, such as "Coordinated Resource Management and Planning" [Public Resources Code Section 9408(c)] and "Natural Community Conservation Planning" (Fish and Game Code Section 2800 et seq.) should ensure full participation by local government and property owner representatives.

Utilities and Infrastructure

- Finding 2: High voltage transmission lines have disrupted wildlife use patterns and resulted in the loss of birds due to collision with those lines.
- Recommendation 4: Materials dredged from Delta channels should, if feasible, be stored at upland sites for reuse for levee maintenance and repair, and other feasible uses in the Delta. Impacts to wildlife caused by storage of dredged materials should be mitigated.
- Recommendation 7: Natural gas production will continue to be an important use of Delta resources. Structures needed for gas extraction should be consolidated to minimize displacement of agriculture and wildlife habitat. In compliance with existing laws, facilities no longer needed for gas extraction should be completely removed to allow restoration of agriculture or wildlife habitat uses. Counties should ensure that there are appropriate buffers between gas processing and storage facilities and residential and recreational uses to protect lives and property.
- Policy 1: Impacts associated with construction of transmission lines and utilities can be mitigated by locating new construction in existing utility or transportation corridors, or along property lines, and by minimizing construction impacts. Before new transmission lines are constructed, the utility should determine if an existing line has available capacity. To minimize impacts on agricultural practices, utility lines shall follow edges of fields. Pipelines in utility corridors or existing rights-of-way shall be buried to avoid adverse impacts to terrestrial wildlife. Pipelines crossing agricultural areas shall be buried deep enough to avoid conflicts with normal agricultural or construction activities. Utilities shall be designed and constructed to minimize any detrimental effect on levee integrity or maintenance.

Land Use

- Recommendation 1: A program by non-profit groups or other appropriate entities should be developed to promote acquisition of wildlife and agricultural conservation easements on private lands with the goal of protecting agriculture and wildlife habitat in the Delta.

- Recommendation 2: Public agencies and non-profit groups have or propose to purchase thousands of acres of agricultural lands to restore to wildlife habitat. The amount, type, and location of land identified to be enhanced for wildlife habitat should be studied by wildlife experts to determine goals for future acquisition and restoration. Lands acquired for wildlife habitat should also be evaluated for recreation, access, research and other needed uses in the Delta. Habitat restoration projects should not adversely impact surrounding agricultural practices. Public-private partnerships in management of public lands should be encouraged. Public agencies shall provide funds to replace lost tax base when land is removed from private ownership.
- Recommendation 3: Multiple use of agricultural lands for commercial agriculture, wildlife habitat, and, if appropriate, recreational use, should be supported, and funding to offset management costs pursued from all possible sources. Public agencies shall provide funds to replace lost tax base when land is removed from private ownership.
- Policy 2: Local government general plans, as defined in Government Code Section 65300 et seq., and zoning codes shall continue to strongly promote agriculture as the primary land use in the Primary Zone; recreation land uses shall be supported in appropriate locations and where the recreation uses do not conflict with agricultural land uses or other beneficial uses, such as waterside habitat. County plans and ordinances may support transfer of development rights, lot splits with no increase in density, and clustering to support long-term agricultural viability and open space values of the Primary Zone. Clustering is intended to support efficient use of agricultural lands, not to support new urban development in the Primary Zone. Local governments shall specifically indicate when, how, and why these options would be allowed in the Primary Zone.

Agriculture

- Finding 11: Programs at State and federal level support land management to enhance habitat values on private agricultural lands. Some programs will result in permanent conversion of agricultural land. Examples include: creation of wetlands on agricultural lands; seasonal flooding of agricultural lands; deferred tillage; deferred harvesting of grains; enhancement of field edges as habitat; and planting native plants along roadways and between fields. However, many of the existing programs do not reflect the unique Delta resources and opportunities.
- Policy 7: Local governments shall encourage acquisition of agricultural conservation easements as mitigation for projects within each county, or through public or private funds obtained to protect agricultural and open space values, and habitat value that is associated with agricultural operations. Encourage transfer of development rights within land holdings, from parcel to parcel within the Delta, and where appropriate, to sites outside the Delta. Promote use of environmental mitigation in agricultural areas only when it is consistent and compatible with ongoing agricultural operations and when developed in appropriate locations designated on a countywide or Delta-wide habitat management plan.

- Policy 8: Local governments shall encourage management of agricultural lands which maximize wildlife habitat seasonally and year-round, through techniques such as sequential flooding in fall and winter, leaving crop residue, creation of mosaic of small grains and flooded areas, controlling predators, controlling poaching, controlling public access, and others.

Water

- Goal: Protect long-term water quality in the Delta for agriculture, municipal, industrial, water-contact recreation, and fish and wildlife habitat uses, as well as all other designated beneficial uses.
- Finding 13: Water is needed to enhance seasonal and year-round wildlife habitat in the Delta such as flooding agricultural fields in fall and winter. Seasonal flooding is of particular value to migratory waterfowl.
- Finding 17: Transport of State and federal project water through the Delta does result in levee erosion and reverse flows and may detrimentally affect some fish species.
- Policy 1: Local governments shall ensure that salinity in Delta waters allows full agricultural use of Delta agricultural lands, provide habitat for aquatic life, and meet requirements for drinking water and industrial uses.
- Recommendation 3: Programs to enhance the natural values of the State's aquatic habitats and water quality will benefit the Delta and should be supported.
- Recommendation 5: Water for flooding to provide seasonal and year-round wildlife habitat should be provided as part of State and federal programs to provide water for wildlife habitat.

Recreation and Access

- Finding 5: The Delta waterways are recognized as valuable habitat for resident and migratory species, including fish, amphibians, birds, and mammals.
- Finding 6: Some recreational activities are detrimental to habitat values; such as those that create loud noises, create waves or wakes; or disturb sediments. Recreational boating adversely impacts the stability of some levees through creation of wakes increasing costs of maintenance. Wake erosion also adversely impacts wildlife habitat areas, such as channel islands.
- Finding 10: The marina permit application process is long, expensive and difficult due to: difficulty in obtaining upland sites and leases for underwater lands, land ownership issues, possible impacts to the environment including rare and endangered fish and plant species, limitations on dredging, and protection of riparian vegetation.
- Policy 2: To minimize impacts to agriculture and to wildlife habitat, local governments shall encourage expansion of existing private water-oriented commercial recreational facilities over construction of new facilities. Local governments shall ensure any new recreational facilities will be adequately supervised and maintained.
- Recommendation 2: Support a scientifically-valid study of the carrying capacity of the Delta waterways for recreation activities without degradation of habitat values which minimize impacts to agriculture or levees.

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- Recommendation 5: To protect rare and endangered fish species from adverse impacts of poaching, the Department of Fish and Game (DFG) should study the feasibility and value of banning night fishing in the Delta.
- Recommendation 10: New, expanded, or renovated marinas should minimize toxic discharges (including paint, paint chips, chemicals, heavy metals, tributulin, oil, grease, and fuel) and prohibit discharges of untreated sewage as required under local, State, and federal laws and regulations.
- Policy 2: To minimize impacts to agriculture and to wildlife habitat, local governments shall encourage expansion of existing private water-oriented commercial recreational facilities over construction of new facilities. Local governments shall ensure any new recreational facilities will be adequately supervised and maintained.
- Policy 3: Local governments shall develop siting criteria for recreation projects which will ensure minimal adverse impacts on: agricultural land uses, levees, and public drinking water supply intakes, and identified sensitive wetland and habitat areas.

Levees

- Finding 8: Materials for levee construction and repair have routinely been dredged from adjacent waterways. Environmental regulations to protect endangered fish and other restrictions have limited access to this traditional source of material. Historically lower costs of using dredged material have been offset by increased regulatory costs. Other sources of levee maintenance material include: on-island deposits; quarries; construction projects, including habitat enhancement projects; and spoils from authorized maintenance dredging projects by ports or flood control districts.
- Finding 13: Loss of Delta levees could result in loss of life; lowered water quality for water diverted by local water systems and for export through the State and federal water systems; loss of freshwater due to increased evaporation; loss of property, including crops and structures; and loss of habitat. Rodent dens and tunnels, particularly those created by beaver and muskrat, can adversely affect levee stability and are thought to have been the cause of numerous levee failures.
- Policy 1: Local governments shall ensure that Delta levees are maintained to protect human life, to provide flood protection, to protect private and public property, to protect historic structures and communities, to protect riparian and upland habitat, to promote interstate and intrastate commerce, to protect water quality in the State and federal water projects, and to protect recreational use of the Delta area. Delta levee maintenance and rehabilitation shall be given priority over other uses of the levee areas. To the extent levee integrity is not jeopardized, other uses, including support of vegetation for wildlife habitat, shall be allowed.
- Recommendation 1: Levee maintenance, rehabilitation, and upgrading should be established as the first and highest priority of use of the levee. No other use whether for habitat, trails, recreational facilities, or roads should be allowed to unreasonably adversely impact levee integrity or maintenance.

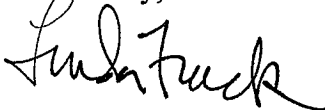
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- Recommendation 2: Landowners, through reclamation districts, should pay a portion of levee maintenance costs. The overall citizenry of California and the United States that benefits from the state and federal water projects, commerce and navigation, travel, production of crops, recreation, and protection of fish and wildlife habitat should also pay a substantial portion of the cost of maintaining the Delta levees. New programs of determining assessments on mineral leases and other beneficiaries should be evaluated by reclamation districts.
- Recommendation 8: To lower levee maintenance costs, streamlined permitting systems for authorization of dredging for levee maintenance and rehabilitation work, including the improvement of wildlife habitat and habitat mitigation sites, and for levee upgrading to mandated standards to protect public health and safety, should be instituted, with one state agency designated as lead agency and one federal agency designated as lead agency. Federal agency concurrence in such designations should be obtained.
- Recommendation 12: Levee maintaining agencies and fish and wildlife agencies should continue to cooperate to establish appropriate vegetation guidelines. Continuation of the SB 34 Program with its incentive funding for mitigation should be supported as the best way to accomplish the goals of levee maintenance with no net long term loss of habitat.

It is also worth noting, relative to the Commission's Management Plan that pursuant to the Commission's adopted 2006-2011 Strategic Plan and in response to the Governor's recommendation in February of 2008, the process for updating the Management plan has been initiated with anticipated completion by the end of the year. Delta initiatives and processes underway (including DBCP and Delta Vision) that may be of relevance to the Commission's policies and mandates are being taken into consideration in this process.

A copy of the Management Plan and the Act are available at the Commission's web site www.delta.ca.gov for your reference. Please contact me at (916) 776-2292 or lindadpc@citlink.net if you have any questions regarding the Commission or the comments provided herein.

Sincerely,



Linda Fiack
Executive Director